

THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ALICIA NOLEN, individually and on behalf
of all others similarly situated,

Plaintiffs,

vs.

PEOPLECONNECT, INC., a Delaware
Corporation,

Defendant.

Case No.: 3:20-cv-09203-EMC

Judge Edward M. Chen

SUPPLEMENTAL DECLARATION OF STEVEN WEISBROT, ESQ.
RE: PROPOSED NOTICE PLAN

1 I, Steven Weisbrot, Esq. hereby declare as follows:

2 1. I am the President and Chief Executive Officer at the class action notice and claims
3 administration firm Angeion Group, LLC (“Angeion”). Angeion specializes in designing,
4 developing, analyzing, and implementing large-scale, unbiased legal notification plans.

5 2. My credentials were reported to the Court in the Declaration of Steven Weisbrot,
6 Esq., in Support of Plaintiff’s Notice of Motion and Motion for Class Certification (Dkt. No. 197)
7 (“Notice Plan Declaration”).

8 3. The purpose of this declaration is to provide the Court with additional information
9 about the proposed notice plan (“Notice Plan”).

10 **Summary of the Notice Plan**

11 4. As discussed in the Notice Plan Declaration, the media campaign components of
12 the Notice Plan are designed notify the overwhelming majority of potential Class Members by
13 delivering an approximate 95.06% reach and an average frequency of 3.20 times (*see* ¶¶ 19-22).

14 5. The media notice components include programmatic display advertising, social
15 media advertising via Facebook and Instagram, a paid search campaign, and publication in the
16 California edition of *People* magazine, as well as publication in top California newspapers (*see*
17 ¶¶ 23-42).

18 6. The Notice Plan also includes the implementation of a dedicated website and toll-
19 free telephone support to further apprise Class Members of their rights and options in the litigation
20 (*see* ¶¶ 45-46).

21 **Class Definition & Target Audience Definition**

22 7. The class definition is the starting point when developing a notice plan,
23 specifically when identifying a target audience appropriate for that class. The Notice Plan
24 Declaration assumed the following Class definition: “All persons residing in the State of
25 California who are not registered users of Classmates.com and whose names and yearbook
26 photographs are or were searchable on the Classmates.com website, where at least one such
27 yearbook photograph became searchable for the first time on or after December 18, 2018” (*see* ¶

17). Based on that Class definition, the following Target Audience definition was used to profile potential Class Members: **Adults 18+ and State Group Codes: California.**¹

8. Angeion has been informed that the revised Class definition Plaintiff proposes is: “All persons residing in the State of California who: (1) are not registered users of Classmates.com; (2) have never donated a yearbook to Classmates.com; (3) whose names are or were searchable on the Classmates.com website, where “searchable” means that a search for their name yields at least one result identifying them by name, school, and year of attendance; and (4) where at least one such result became searchable for the first time on or after December 18, 2018.”

9. The Class and Target Audience definitions are separate and distinct from one another, which is commonplace in class action notice plans.² Here, the Target Audience definition was intentionally overinclusive of the original Class definition and remains intentionally overinclusive of the revised Class definition. Utilizing an overinclusive proxy audience is commonplace in class action litigation (and advertising generally), maximizes the efficacy of the notice plan and is considered a best practice among media planners and class action notice experts alike to ensure class members receive Due Process of law.³

10. For the reasons discussed herein, it is my professional opinion that the Target Audience definition remains appropriate to profile potential Class Members based on Plaintiff’s proposed Class definition.

¹ As discussed in the Notice Plan Declaration, the Target Audience definition is based on objective syndicated data, *i.e.*, data analyzed from 2022 comScore Multi-Platform/MRI Simmons USA Fusion, which allows for the reporting of reach and frequency (*see* ¶¶ 25-28).

² It is important to note that the characteristics provided in ¶ 30 of the Notice Plan Declaration are derived from the data garnered by 2022 comScore Multi-Platform/MRI Simmons USA Fusion, which is a proxy audience based on objective data.

³ If the total population base (or number of class members) is unknown, it is accepted advertising and communication practice to use a proxy-media definition, which is based on accepted media research tools and methods that will allow the notice expert to establish that number. The percentage of the population reached by supporting media can then be established. Duke Law School, GUIDELINES AND BEST PRACTICES IMPLEMENTING 2018 AMENDMENTS TO RULE 23 CLASS ACTION SETTLEMENT PROVISIONS, at 56.

Proposed Notice Schedule

11. Angeion recommends that the digital and social media components of the Notice Plan, consisting of programmatic display advertising, social media advertising, and a paid search campaign, run for a period of six (6) consecutive weeks. Attached hereto as **Exhibit A** are sample internet advertisements.

12. During this six (6) week period, Angeion will cause notice of the litigation to be published in the California edition of *People* magazine and in the top California newspapers.

13. The dedicated website and toll-free hotline will be activated prior to the commencement of the media notice efforts.

14. Angeion anticipates notice will commence within twenty-one (21) days of an Order approving the Notice Plan.

Proposed Notices

15. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” Angeion maintains a strong commitment to adhering to this requirement, drawing on its experience and expertise to craft notices that effectively convey the necessary information to Class Members in plain language.

16. Angeion has reviewed the proposed Notice forms prepared in this matter. The notice forms contain plain-language summaries of key information about the rights and options of Class Members, including the nature of the action, the definition of the class certified, the time and manner for requesting exclusion and the binding effect of remaining in the Class. Attached hereto as **Exhibits B** and **C**, respectively, are copies of the Full Notice and Summary Notice.

Exclusion Form

17. As discussed in the Notice Plan Declaration, Class Members can submit an exclusion request online via the dedicated website. Class Members will also be able to download a blank Exclusion Form that can be completed and returned via mail. A copy of the Exclusion Form is attached hereto as **Exhibit D**.

Notice & Administration Costs

18. Angeion estimates that the cost to effectuate the Notice Plan and accompanying administrative work will be approximately \$424,500.

Conclusion

19. The Notice Plan Declaration and this supplemental declaration describe the reach and frequency evidence which courts systemically rely upon in reviewing class action publication notice programs for adequacy. The reach percentage discussed herein exceeds the guidelines forth in the Federal Judicial Center's Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide regarding effectuating a notice program that reaches a high degree of Class Members.

20. Specifically, the media campaign portions of the Notice Plan are designed to deliver an approximate 95.06% reach with an average frequency of 3.20 times each. It should be noted that the 95.06% reach approximation does not include the dedicated website or the toll-free hotline, as these components are difficult to measure in terms of reach.

21. The Federal Judicial Center states that a publication notice plan that reaches 70% of class members is one that reaches a "high percentage" and is within the "norm." Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, "Managing Class Action Litigation: A Pocket Guide for Judges", at 27 (3d Ed. 2010). As such, the approximate 95.06 reach percentage is significantly higher than what is accepted in many similar cases.

22. It remains my opinion that the methods of notice outlined herein will provide full and proper notice to Class Members and that the Notice Plan is the best notice that is practicable under the circumstances and will fully comport with due process and all applicable rules and standards.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct, and that this declaration was executed in Parkland, Florida.

Dated: January 9, 2024

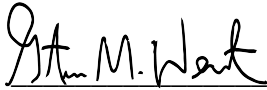

Steven Weisbrot, Esq.

Exhibit A

If you are a **California** resident and are **not** a registered user of **Classmates.com**, a class action lawsuit may affect your rights.

CLICK HERE for more information





If you are a **California** resident and are **not** a registered user of **Classmates.com**, a class action lawsuit may affect your rights.



CLICK HERE for more information

Desktop


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If you are a California resident and are not a registered user of Classmates .com, a class action lawsuit may affect your rights.



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If you are a California resident and are not a registered user of Classmates .com, a class action lawsuit may affect your rights.



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Class Action Lawsuit

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Exhibit B

**In the United States District Court for
The Northern District of California
NOTICE OF CLASS CERTIFICATION**

A court authorized this Notice. It is not a solicitation from a lawyer. You are not being sued.

A class action lawsuit is pending in the United States District Court for Northern District of California (“the Court”), filed by Alicia Nolen (“Plaintiff”) against PeopleConnect, Inc. (“Defendant”). Defendant owns and operates a website on which users may search for and view photographs and names from school yearbooks. Plaintiff alleges that by using former students’ names, personas, and photographs to advertise website subscriptions without consent, Defendant violated California law. Defendant denies any wrongdoing.

IMPORTANT: do not visit the Defendant’s website in response to this notice. Do not register for an account on that website. If you do, you may jeopardize your ability to participate in this action, and your ability to pursue legal claims of any kind against PeopleConnect, Inc.

Instead, please visit **INSERT NOTICE WEBSITE**.

The Court decided that this lawsuit should proceed as a class action on behalf of the following Class, which could include you:

All persons residing in the State of California who: (1) are not registered users of [Classmates.com](#); (2) have never donated a yearbook to [Classmates.com](#); (3) whose names are or were searchable on the [Classmates.com](#) website, where “searchable” means that a search for their name yields at least one result identifying them by name, school, and year of attendance; and (4) where at least one such result became searchable for the first time on or after December 18, 2018.

How do I know if I am a Class Member? You are a member of the Class if: (1) when you enter your name into the search bar at **LINK**, your name and school are returned in the search results; and (2) you have never registered for an account on Classmates (PeopleConnect’s website). If you have never registered an account, please visit **LINK** to determine if you are a Class member.

YOUR RIGHTS AND OPTIONS IF YOU ARE A CLASS MEMBER:

DO NOTHING	Stay in this lawsuit and share in possible benefits. Give up certain rights. By doing nothing, you are choosing to stay in the Class. You may be permitted to share in any recovery that may result from this lawsuit, but you will give up your rights to sue Defendant in a separate lawsuit for the claims made in this lawsuit. In addition, you will be bound by past and any future court rulings on, or settlement of, the claims made against Defendant.
ASK TO BE EXCLUDED	Get out of this lawsuit. Get no benefit, but keep your rights. If you opt out of the Class (meaning you say in writing that you do not want to be included in this lawsuit), you will not be entitled to any recovery that may result from this lawsuit, but you will not be bound by any past or future court rulings against Defendant. You will be free to pursue your own claims against Defendant on your own or as part of a different lawsuit.

Why did I get this notice? This notice is meant for adults currently residing in California, or who resided in California at any time between December 18, 2018, and today.

What is this lawsuit about? This lawsuit is about whether Defendant violated California residents' intellectual property and property rights by using their names, personas, and yearbook photographs to advertise website subscriptions without their prior consent. Plaintiff asserts claims under California's right of publicity statute, Cal. Civ. Code § 3344; California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200; and California unjust enrichment law. Defendant asserts various defenses, including: that providing searchable access to names and photographs does not constitute advertising or commercial use under California law; that it is immune from liability under the Communications Decency Act; and that the applicable statute of limitations bars some Class members' claims. At this stage, the court has not conclusively ruled on either Plaintiff's claims or Defendant's defenses.

What is the current status of the lawsuit? The lawsuit was filed on December 18, 2020. Since then, the parties have litigated many motions, including a motion to compel arbitration, a motion to dismiss, a motion for summary judgment, and a motion for class certification. Defendant appealed the denial of the motion to compel arbitration to the Ninth Circuit, and the Ninth Circuit affirmed the district court's decision. On **DATE**, this Court granted Class action status to this action.

What is the Plaintiff asking for on behalf of the Class? The Plaintiff is asking for monetary damages for each Class member in the amount of the statutory minimum damages provided for under Cal. Civ. Code § 3344, or \$750. The Plaintiff is also seeking an injunction prohibiting Defendant from using Class members' names and personas without consent. The Plaintiff is also seeking pre-judgment and post-judgment interest, as well as reasonable attorneys' fees and costs.

Is there money available now? No money or benefits are available now because the Court has not rendered a final decision on whether Defendant is liable and, if so, the amount of damages to be awarded, if any. There is no guarantee that money or benefits ever will be obtained. If they are, you may be entitled to receive a share.

What are my options if I am a Class member? You may stay in the Class (by doing nothing) and participate in any eventual recovery, if any. Or you may opt out (see below) and preserve your right to pursue your own legal claim.

What happens if I do nothing and choose to stay in the Class? If you stay in the Class, you may be permitted to share in a recovery, if any, which may occur. But you give up any right to sue Defendant separately for the same legal claims made in this lawsuit. You also will be legally bound by the orders the Court issues and judgments the Court makes in this class action, even if there is no recovery.

What happens if I opt out of the Class? If you opt out of the Class (by stating in writing that you do not want to be included in the Class in this lawsuit), you will give up the right to participate in any recovery that may occur. But you will keep any rights you may currently have to sue Defendant regarding the legal claims at issue in this lawsuit. You also will not be bound by the Orders the Court issues and Judgments the Court makes in this lawsuit.

How do I opt out of the Class? If you want to opt out of the Class, please fill out the form provided at [LINK](#). You must fill out the form before [DATE](#).

As a Class member, do I have attorneys representing my interests? Yes. The Court has appointed lawyers to represent you and other Class Members. These lawyers are called Class Counsel. The following lawyers are representing the Class:

Names and contact information

How will the lawyers be compensated, and will the named Plaintiff receive compensation? If recovery is obtained for the Class, Class Counsel will request from the Court an award for attorneys' fees and expenses. Class Counsel may also ask the Court to approve a reasonable incentive award for the Class Representatives. If approved, these fees and expenses and incentive awards will either be paid from the recovery obtained for the Class or separately by Defendant.

Can I get my own lawyer? You do not need to hire your own lawyer because Class Counsel is working for you. However, you are welcome to hire your own lawyer at your own expense. If you hire a lawyer to speak for you or to appear in Court your lawyer must file a Notice of Appearance with the Court.

Exhibit C

COURT-APPROVED LEGAL NOTICE

If you are or were a California resident and are not a registered user of Classmates.com, a class action lawsuit may affect your rights.

A class action lawsuit, *Nolen v. PeopleConnect, Inc.*, Case No. 3:20-cv-09203-EMC, is pending in the United States District Court for Northern District of California (“the Court”), filed by Alicia Nolen (“Plaintiff”) against PeopleConnect, Inc. (“Defendant”). Defendant owns and operates a website on which users may search for and view photographs and names from school yearbooks. Plaintiff alleges that by using former students’ names, personas, and photographs to advertise website subscriptions without consent, Defendant violated California law. Defendant denies any wrongdoing.

The Court decided that this lawsuit should proceed as a class action on behalf of the following Class:

All persons residing in the State of California who: (1) are not registered users of Classmates.com; (2) have never donated a yearbook to Classmates.com; (3) whose names are or were searchable on the Classmates.com website, where “searchable” means that a search for their name yields at least one result identifying them by name, school, and year of attendance; and (4) where at least one such result became searchable for the first time on or after December 18, 2018.

IMPORTANT: Do not visit the Defendant's website in response to this notice. Do not register for an account on that website. If you do, you may jeopardize your ability to participate in this action, and your ability to pursue legal claims of any kind against PeopleConnect, Inc.

Instead, please visit [INSERT NOTICE WEBSITE](#).

What is the current status of the lawsuit?

The lawsuit was filed on December 18, 2020. Since then, the parties have litigated many motions, including a motion to compel arbitration, a motion to dismiss, a motion for summary judgment, and a motion for class certification. Defendant appealed the denial of the motion to compel arbitration to the Ninth Circuit, and the Ninth Circuit affirmed the district court’s decision. On [DATE](#), this Court granted Class action status to this action.

Is there money available now?

No money or benefits are available now because the Court has not rendered a final decision on whether Defendant is liable and, if so, the amount of damages to be awarded, if any. There is no guarantee that money or benefits ever will be obtained. If they are, you may be entitled to receive a share.

What are my options?

Do Nothing. If you do nothing and stay in the Class, you may be permitted to share in a recovery, if any, which may occur. But you give up any right to sue Defendant separately for the same legal claims made in this lawsuit. You also will be legally bound by the orders the Court issues and judgments the Court makes in this class action, even if there is no recovery. **Opt Out.** If you opt out of the Class, you will give up the right to participate in any recovery that may occur. But you will keep any rights you may currently have to sue Defendant regarding the legal claims at issue in this lawsuit. You also will not be bound by the Orders the Court issues and Judgments the Court makes in this lawsuit.

If you want to opt out of the Class, please fill out the form provided at [LINK](#). You must fill out the form before [DATE](#).

As a Class member, do I have attorneys representing my interests?

Yes. The Court has appointed the following lawyers as Class Counsel to represent the Class: [INSERT](#). If recovery is obtained for the Class, Class Counsel will request from the Court an award for attorneys’ fees and expenses. Class Counsel may also ask the Court to approve a reasonable incentive award for the Class Representatives. If approved, these fees and expenses and incentive awards will either be paid from the recovery obtained for the Class or separately by Defendant. You do not need to hire your own lawyer because Class Counsel is working for you. However, you are welcome to hire your own lawyer at your own expense. If you hire a lawyer to speak for you or to appear in Court your lawyer must file a Notice of Appearance with the Court.

This Notice is only a Summary. For more information, please visit [WEBSITE](#) or call toll-free 1-[XXX-XXX-XXXX](#).

Exhibit D

Your exclusion must be
submitted online or
postmarked by:
DATE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

NOLEN V. PEOPLECONNECT, INC.
CASE No. 3:20-CV-09203-EMC

CLASSMATES

EXCLUSION FORM

INSTRUCTIONS

Complete, sign, and mail your Exclusion Form so it is postmarked no later than **DATE** to: Nolen v. PeopleConnect Class Action, ATTN: Exclusion Request, P.O. Box 58220, Philadelphia, PA 19102, or submit your exclusion request online at **WEBSITE**. The deadline to submit your exclusion request online is **DATE**.

CLASS MEMBER INFORMATION

Please provide the following information:

First Name: _____ Last Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Email Address: _____

List any additional Email Addresses you have: _____

High School Name: _____ High School Graduation Year: _____

SIGNATURE AND ATTESTATION

By completing, signing, and submitting this Exclusion Form, I hereby attest to the following:

- I have read the Class definition¹ and believe that I am a Class Member;
- I currently am a resident of California, or I resided in California between December 18, 2018 and the present;
- I never created an account at Classmates.com; and
- I wish to be excluded from class action lawsuit *Nolen v. PeopleConnect, Inc.*, No. 3:20-cv-09203-EMC (N.D. Cal.).

I understand that by submitting this Exclusion Form I am requesting exclusion from the Class, and I will not receive any money or benefits the Class and Plaintiff could potentially be awarded.

Signature

Date: _____
MM DD YYYY

¹ The Class includes: All persons residing in the State of California who: (1) are not registered users of Classmates.com; (2) have never donated a yearbook to Classmates.com; (3) whose names are or were searchable on the Classmates.com website, where “searchable” means that a search for their name yields at least one result identifying them by name, school, and year of attendance; and (4) where at least one such result became searchable for the first time on or after December 18, 2018.